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ADVOCATES

Guernsey Wills



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Why make a Will?

It allows you to leave your property to the people/institutions you wish to receive it (subject to the restrictions imposed by Guernsey law).

It also provides certainty and direction for your family and friends at a very difficult time.

What happens if you don't make a Will?

If you do not make a Will, you die "intestate". Guernsey has specific rules which dictate how your property will be distributed if you die intestate. These rules of intestacy mean that your spouse or partner may not inherit as much as you would have wished (or possibly not at all).

What is a Will?

A Will is a document in which you state how you wish your property to be distributed after your death, the person you want to distribute the property and the person who you would wish to care for your children.

Since 7 May 2008 it has been possible to make a single Will which deals with all of your property, both "real" (land and buildings in Guernsey) and "personal" (money, stocks and shares, items of furniture etc).

You must bear in mind that a Will dealing with your real property will be registered at the Greffe on your death as a document of title, and therefore if you have very complicated wishes or complex trust arrangements in respect of your personal property, you may prefer to have two separate Wills: one dealing with your real property and the other with your personal property.

How do you make a Will?

It must be signed and dated in the presence of two witnesses. It can be witnessed by any two people provided that they are not beneficiaries of the Will, spouses of beneficiaries or your descendants, and that they are over 14 years old. It is no longer a requirement of Guernsey law that your Will of real property be witnessed by two Jurats.

Guernsey rules of inheritance are complex and in order for your advocate to advise you fully it is of assistance if he/she is aware of all of your circumstances which can be set out clearly in the "Checklist" (which you can download by clicking [here](#)).

Rules relating to Guernsey Real Property

Restrictions

- If you die leaving children (or remoter descendants i.e. grandchildren etc) it is only possible to leave your real property either to your surviving spouse or to one or more of your children or remoter descendants (stepchildren can be included).
 - If you die leaving children or remoter descendants, it is not possible to place your real property in trust.
 - If you die leaving neither a spouse nor children (or remoter descendants) surviving, you can dispose freely of your real property by Will.
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Intestacy

If you die without leaving a Will, your real property will pass to your children (or remoter descendants), or if you do not have any, to your heirs at law (normally brothers and sisters or their respective children) subject to the enjoyment of half of it until death or remarriage by your surviving spouse.

Situation of Spouse

- Whether or not you leave children or remoter descendants, you can make a Will leaving all of your real property (or specified parts of it) to your spouse.
- Frequently, married people own their real property jointly (“for themselves, the survivor of them and the heirs of such survivor”). The effect of this is that on the death of the first spouse, the real property passes automatically to the surviving spouse.

Distinction between Legitimate and Illegitimate Children

The distinction between legitimate and illegitimate children was removed as of 7 May 2008. The changes in the Guernsey laws of inheritance are not, however, retrospective. Therefore if a Will of real property was executed prior to 7 May 2008, illegitimate children/descendants will not be entitled to any part of your real property unless you have specifically included them in the Will.

If, on the other hand, you wish to ensure that illegitimate children/descendants do not inherit your real property, you should make a Will naming your legitimate children as the beneficiaries of your real property.

If there is any doubt over the identity of your descendants who are to inherit your real property, it may be necessary for an application to be made to the Royal Court to allow the proceeds of sale of your real property to be distributed to the correct beneficiaries.

It is, therefore, more important than ever, if you are a parent, that you make a Will specifically naming the children you wish to inherit your real property.

Rules relating to Personal Property

At the current time Guernsey law stipulates that your surviving spouse and your surviving children are entitled to certain specified shares in your estate.

Entitlements

1. The entitlements of your children are as follows:

- If you leave a spouse they are entitled to one-third of your personal property, and if you have no surviving spouse, they are entitled to one-half.
- If you have more than one child they share this entitlement equally.
- If one of your children dies before you and leaves children of their own, then their entitlement will be passed equally to their own children.

2. The entitlement of your spouse:

- one-third of the value of your personal property if you also have children, and one-half of the value of your estate if there are none.
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Freely disposable part – the part which can be disposed of by your Will

This is the part of your personal property which is left over after dealing with the entitlements of a surviving spouse and/or surviving children/descendants.

- If you have a spouse and children when you die, then the disposable part of your personal property is one-third.
- If you leave a spouse but no children, then the disposable part of your personal property is one-half.
- If you leave children but no spouse, the disposable part is again one-half of your personal property.
- If you do not leave either a spouse or children, then you may dispose freely of the entire value of your personal property.

Intestacy

If you do not make a Will in respect of your personal property:

- If you have children/descendants when you die, then the third or half, as the case may be, of the freely disposable part of your personal property will be inherited by the children/descendants.
- If you have no children/descendants when you die, the freely disposable part is inherited by your heirs at law (normally brothers and sisters or their children).

The removal of the distinction between legitimate and illegitimate children applies equally to personal property as it does to real property. For the sake of clarity it is therefore now advisable to set out the names of your children in any Will which is made after 7 May 2008.

This is intended as a brief guide to making a Will and to the Guernsey laws of inheritance. You should take legal advice specific to your own circumstances before making your own Will or revising any Will which you have previously made.